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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/748,804   | 12/30/2003  | Peter J. Myers       | 20014/38782         | 2126             |
| 34431  | 7590        | 09/20/2006           | EXAMINER            |                  |
| HANLEY, FLIGHT & ZIMMERMAN, LLC<br>20 N. WACKER DRIVE<br>SUITE 4220<br>CHICAGO, IL 60606 |             |                      | PHAN, HAU VAN       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3618                |                  |

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/748,804             | MYERS ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Hau V Phan             | 3618                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 July 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-51 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 23 and 51 is/are allowed.  
 6) Claim(s) 1-22,24-31,34,36-38 and 42-44 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 30 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Acknowledgment*

1. The amendment filed on 7/17/2006 has been entered.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. **Claims 1-4, 7-8, 12-14, 18-22, 28-31, 34, 36-38, 42 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers et al. (6,863,287) in view of Sanchez (4,480,864).**

Myers et al. disclose a convertible walker (10), which can be used a seat position or a standing position having a seat (60). The standing position can be considered a walk- behind walker, which the seat is removed from the convertible walker. Myers et al. fail to show a base.

Sanchez in figures 1-8, teaches a baby-walker, which can be a child entertaining apparatus comprising a base (28), a seat (25) and a wheel walker (10) to at least partially support the seat above the base. The wheel walker has a lower portion and a top portion and is being removable from the base. The top portion includes the seat (25) and the lower portion can be considered a wheeled walk-behind walker. The

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wheeled walker includes at least one wheel (16) in contact with the base when the wheeled walker at least partially supports the seat above the base. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the child walker of Myers et al. with the baby walker having base as taught by Sanchez in order to provide a wheel walk-behind walker, which can easily and effectively be converted from a normal fully mobile condition to a stationary condition.

Regarding claim 2, Sanchez discloses the seat, which is rotatable relative to the base.

Regarding claim 3, Sanchez discloses the seat comprising a fabric or plastic seat supported within a ring.

Regarding claim 4, Sanchez discloses the seat, which is adjustable to adjust a distance between the seat and the base.

Regarding claim 7, Sanchez discloses the wheel walker comprising a tray (21).

Regarding claim 8, Sanchez discloses the tray, which is at least partially supported by the wheeled walker.

Regarding claim 12, Sanchez discloses the wheeled walker, which is removed from the base. The tray can be disposed above the base to permit a child seated on the floor to play with the at least one toy.

Regarding claim 13, Sanchez discloses the tray, which is coupled to the base by an arm.

Regarding claim 14, Sanchez discloses the tray, which is pivotably coupled to the arm.

Regarding claims 18-19, Sanchez discloses the arm having an upper portion and a lower portion, at least one of the upper and lower portions being rotatable relative to another of the upper and lower portions. Wherein the upper and lower portions are rotatable about a longitudinal axis of the arm.

Regarding claim 21, Sanchez discloses the receptacles substantially prevent the wheeled walker from rolling on the wheels.

Regarding claim 22, Sanchez discloses springs or flexible strap (52) to permit bouncing movement between the seat and the base.

Regarding claim 28, Sanchez discloses the wheeled walker comprising at least one leg.

Regarding claim 29, Sanchez discloses the wheeled walker further comprising an upper frame coupled to the at least one leg.

Regarding claim 30, Sanchez discloses a handle (a top table peripheral can be used as a handle) located to be gripped by a standing child.

Regarding claim 31, Sanchez discloses the handle is movable from a stored position to a use position.

Regarding claim 38, Sanchez discloses the structure, which can be used the same method by securing the seat to the wheeled walker.

**4. Claims 34, 36-38, 42 and 44 are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Sanchez (4,480,846) in view of Myers et al. (6,863,287).**

Regarding claim 34, Sanchez discloses a child entertaining apparatus comprising base (28), a seat (25) pivotably coupled to the base and a support (13) positionable

between the base and the seat to support the seat above the base. Sanchez fails to show a removable support, which is a walk-behind walker.

Myers et al. teach a convertible walker (10), which can be used a seat position or a standing position having a seat (60). The standing position can be considered a walk-behind walker, which the seat is removed from the convertible walker. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the walker of Snachez with the convertible walker that can be convert between a walker and a walk-behind walker as taught by Myers et al. in order to help the child developing the ability to walk.

Regarding claim 42, when the convertible walker is placed on the base of Sanchez. The method can be comprised a following steps using the convertible walker as a support to at last partially support a seat (60) above a base (11a) and removing the wheel walker from the seat and the base to use the wheel walker as an aid in teaching a child to walk.

**5. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers et al. in view of Sanchez (4,480,846) as applied to claim 1 above, and further in view of Sudo (3,796,430).**

The combination of Myers et al. and Sanchez disclose the seat, but fails to show a shortening mechanism.

Sudo in figures 1-2, teaches a baby walker comprising a seat (4) including a shortening mechanism. The shortening mechanism includes a buckle, a first belt having a first end fixed to the seat and a second end coupled to the buckle and a

second belt having a first end fixed to the seat and a second end coupled to the buckle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the seat of Myers et al. in view of Sanchez with the baby walker having a seat including a shortening mechanism as taught by Sudo in order to adjust the height of the seat.

**6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers et al. in view of Sanchez (4,480,846) as applied to claim 8 above, and further in view of Perego (5,071,149)**

The combination of Myers et al. and Sanchez disclose the tray, but fails to show the tray is removably secured to the wheel walker.

Perego in figure 2, teaches a go cart for children comprising a tray (15), which is removably secured to the cart. The tray comprises at least one toy coupled to the tray. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the wheel walker of Myers et al. in view Sanchez with the go cart for children having a removably tray, which includes at least one toy as taught by Perego in order to satisfy every play and cognitive requirement of the child.

**7. Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers et al. in view of Sanchez (4,480,846) as applied to claim 1 above, and further in view of Meeker et al. (6,299,247)**

The combination of Myers et al. and Sanchez disclose the base, but fails to show the base comprising a domed surface beneath the seat.

Meeker et al. in figure 1, teach a child exercise rocker comprising a base (54) having a domed surface. The base is rockable and has a lock out mechanism (86) to prevent rocking. The lock out mechanism includes a leg carrying a state message and the base define a window positioned to display the state of message when the lock out mechanism is in a predetermined state associated with the state message. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the base of Myers et al. in view Snachez with the child exercise rocker having a base with a domed surface as taught by Meeker et al. in order to provide a base that can be rocked in any directions.

***Allowable Subject Matter***

8. Claim 47 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Claims 15-17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
10. Claims 23 and 51 are allowed.

***Response to Arguments***

11. Applicant's arguments filed 7/17/2006 have been fully considered but they are not persuasive. In response to applicant's remark that Myers only qualifies as prior art to this application under 35 U.S.C 102 (e), because both Myers and this application were

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owned by the same assignee or under an obligation to be assigned to the same assignee. Therefore; as a matter of law, Myers cann't be used in a rejection under 35 U.S.C. 103. As a result, all of the art rejections are in error and must be withdrawn. The examiner disagrees, because the condition for the rejection under 35 U.S.C 102 (e) is the invention was described in (1) an application for patent, published under section 122(b), **by another filed** in the United States. US patent 6,863,287 is not by another and has at least one common inventor. Therefore; it cannot be rejection under 35 U.S.C 102 (e). Also the Myers patent doses not have the same inventive entity.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V. Phan whose telephone number is 571-272-6696. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hau V Phan  
Primary Examiner  
Art Unit 3618



A handwritten signature in black ink, appearing to read "Hau Phan".

9/16/06